

DAVID MERIWETHER.

FEBRUARY 7, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SHAW, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 331.]

The Committee on Claims, to whom was referred the bill (H. R. 331) for the relief of David Meriwether, respectfully report as follows:

This claim is for several sums of money claimed to be due Mr. Meriwether for services performed and losses sustained by him while governor of the Territory of New Mexico. This case was referred by the Committee on Claims in the Forty-eighth Congress to the Court of Claims, under act of March 3, 1883, for a finding of facts, and that court has found the facts, and its findings are annexed to and made a part of this report. This case consists of three branches, which we will consider in their order:

(1) The claimant, David Meriwether, was appointed governor of the Territory of New Mexico May 6, 1853, and held that office till October 30, 1857. An act of Congress in force at the beginning of Governor Meriwether's term, that of September 9, 1850, 9th Statutes at Large, page 446, provided, in section 3, page 447—

That the executive power and authority in and over said Territory of New Mexico shall be vested in a governor who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect.

And in section 12 of the same act, page 451, it was provided:

The governor shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs.

This act continued in force until July, 1854, when Congress enacted, 10th Statutes at Large, page 311, "that the salary of the governor of New Mexico be, and the same is hereby, increased to the sum of three thousand dollars." Inasmuch as the act previously in force had given Mr. Meriwether a salary of one thousand dollars as superintendent of Indian affairs, separate and apart from his salary as governor, it would seem to follow that the increase of his salary as governor did not affect his right to his salary as superintendent of Indian affairs, he being still required to perform the duties of that position, and entitled by the very words of the law to receive its emoluments. This fact would seem

so clear, from the very terms of the law itself, as hardly to require illustration or argument in its support. Yet, if the purpose of the law were doubtful in itself, all doubt would be removed by reference to the law regulating the officers of the Territory of Oregon and their salaries, which will be found in the 9th Statutes at Large, page 437, by which the salary of the governor of that Territory was fixed at \$3,000, and a superintendent of Indian affairs, separate from the governor, was provided for, who was to receive an annual salary of \$2,500.

It is hardly reasonable to suppose that Congress, in imposing upon the person filling the office of governor of New Mexico the double duties of governor and superintendent of Indian affairs, meant to require him to perform those double duties for the same compensation allowed to the governor of another and much smaller Territory who was not required to perform any duties but those strictly appertaining to his office of governor. This view was taken by the Secretary of the Treasury; and the First Comptroller at the time, for the Secretary of the Treasury, Hon. James Guthrie, then filling that office, says, in a letter set forth in the findings of the Court of Claims:

Upon application of the governor of New Mexico, the First Comptroller of the Treasury examined the question of the rate of compensation to which he was entitled, and reported to me his opinion, from which I am unable to dissent, that under the foregoing provisions he is entitled to \$3,000 as governor and \$1,000 as superintendent, making together \$4,000, but no more than \$3,000 has been paid for want of a sufficient appropriation.

The findings of the Court of Claims show that the amount thus recommended has never been paid to the claimant, nor any part thereof. The only obstacle to such a payment has been the want of an appropriation, and upon this point it is very clear that the want of an appropriation constitutes no legal obstacle in the way of payment.

The rule that public obligations can not be discharged by insufficient appropriations has been frequently upheld by the United States Court of Claims in well-considered cases, notably among them those of *Graham v. United States*, 1st Court of Claims Reports, page 380; *Patton v. United States*, 7th Court of Claims Reports, page 362; *Collins v. United States*, 15th Court of Claims Reports, page 22; *Briggs v. United States*, 15th Court of Claims Reports, page 48; *Freedman's Bank v. United States*, 16th Court of Claims Reports, page 29; *French v. United States*, 16th Court of Claims Reports, 419; and *Langston v. United States*, 21st Court of Claims Reports, page 10, in which the general conclusion reached by the court as a result from all previous adjudications is summed up in the following words, which have a special bearing on this case:

Public officers in accepting their positions have a right to rely upon the salary fixed by permanent general laws, and are not to be cut off by insufficient annual appropriations unless accompanied by a repeal of the permanent law, either expressly or by the clearest implication.

This case was affirmed by the Supreme Court under the name of *United States v. Langston*, 118 United States Reports, page 389. This principle requires us to report in favor of the claimant in the present case for his salary as superintendent of Indian affairs, in addition to that already received as governor, being at the rate of one thousand dollars a year, from July 27, 1854, to June 30, 1856, amounting to \$1,929.30.

(2) The Secretary of the Treasury requested Governor Meriwether to act as commissioner and disbursing agent for the work of building the public buildings in the Territory of New Mexico. Although the work

was no part of his duties as governor, he undertook it at the special request of the Secretary of the Treasury, and performed the work not only to the complete satisfaction of the officers of the Treasury Department, but in such a manner as to elicit expressions of gratitude on their part for the interest which he had manifested in the performance of the services. As the work was done by hired labor and not by contract, and the workmen were paid weekly, the payments were numerous, and the responsibility great.

The Court of Claims finds that Governor Meriwether disbursed in this matter \$72,647.53, and that a reasonable commission for his services in so doing would be 5 per cent. of that amount, being \$3,632.38. The duties imposed by law upon the governor of New Mexico have been set forth in an extract in a law contained in a previous part of this report, in which it will be seen that the disbursement of money for the construction of public buildings forms no part of the legal duties of the office, and the language of the Secretary's letter asking Governor Meriwether to undertake that work is the language of request, not of direction or requirement.

The United States Supreme Court has twice decided upon the right of an officer of the United States disbursing public moneys to a reasonable compensation for his services in so doing over and above the salary of the office held by him, when such office did not in itself involve the disbursement of money, but the disbursement was additional to the regular duties of the office. We refer to the case of *Converse v. United States*, 21 Howard, page 463, and *United States v. Brindle*, 110 United States Reports, page 688. In the former of these cases the officer in question was a collector of customs, and was requested by the Secretary of the Treasury to disburse the money to be used on the light-house service. The court held that as the services were not required by law of a collector of customs, but were additional to the legal duties of the office, the collector was entitled to recover a reasonable commission.

In the other case mentioned, that of *United States v. Brindle*, the officer was a receiver of public moneys, and was appointed to sell Indian trust lands. It was held that he was not limited to the salary or emoluments of a receiver of public moneys, but had the right to a reasonable compensation for his services in selling the Indian lands and receiving the money therefor. The same point came up before the United States Court of Claims in *Meigs v. United States*, 19 Court of Claims Reports, page 497, in which General Meigs, the retired Quartermaster-General of the Army, claimed compensation for his services as superintendent of the construction of the Pension Building in the city of Washington, and it was held by the court that he was entitled to such compensation upon the authority of the two cases above set forth. These authorities are conclusive in favor of a reasonable compensation to Governor Meriwether for his services as superintendent and disbursing officer of the public buildings in New Mexico, and the Court of Claims having found that such reasonable compensation would amount to \$3,632.38, your committee report in favor of the allowance to him of that amount.

(3) The next and last item of the claim is for the sum of \$525, lost by Governor Meriwether under the following circumstances:

Having occasion to use a great amount of small coin in paying off the laborers employed on the public buildings, and having a great difficulty in obtaining it in the Territory, he procured from two banks in Louisville, Kentucky, the sum of \$525 in small gold and silver coins. This

was done at the suggestion of the Assistant Secretary of the Treasury, and was obtained with the claimant's own private funds, but exclusively for the purpose of paying the Government laborers in the Territory. He left Louisville on his return to New Mexico in March, 1856, with this coin contained in two bags, which he packed in his trunk in his state-room in the steam-boat on which he was going St. Louis. He arrived at St. Louis in the morning, and had his trunk removed to another steam-boat that was to start up the Missouri River the same evening, and his trunk was placed in his state room on board that boat.

When dinner was announced he bolted from the inside the door of the state-room that led out on the guards, locked the door leading into the cabin, put the key into his pocket, and took his seat at the dining table immediately opposite the last-named door. Immediately after finishing his dinner he returned to the state-room, found that the door leading out on the guards had been broken open; his trunk broken open, and the money which he had obtained as aforesaid for Government purposes, as well as his own money, was gone. He immediately went to the office of the chief of police in St. Louis and offered him one-half the money if he could recover it. He suggested that claimant should remain in St. Louis that night and see what could be done. He did so, but finding that nothing had been accomplished by the next day, took the railroad to Jefferson City where he overtook the steam-boat, boarded it, and went to Independence, Missouri, where he had to borrow \$300 to enable himself and three mechanics, whom he was taking out to New Mexico to work on the public buildings, to get to Santa Fé. He never recovered any part of this money or received any credit for the same at the Treasury.

The loss was not caused by any fault or negligence on the part of the claimant, but was entirely accidental on his part, he having taken all due precautions against loss, and after the loss used all due diligence to recover the stolen money.

Upon this state of facts, the findings of the Court of Claims relieving the claimant entirely from all imputation of fault or negligence, it is very clear that Governor Meriwether ought to be reimbursed for this loss. Possibly he might have applied to the Court of Claims for relief from responsibility under the act of May 9, 1866, 14th Statutes at Large, page 44, which now forms a part of sections 1059 and 1062 of the Revised Statutes of the United States.

It was, however, for a long time supposed from the language of this act, that it applied only to paymasters, quartermasters, commissaries, and other officers of the Army, and it was not until the decision of the Court of Claims in the case of *Hobbs v. United States*, 17 Court of Claims Reports, page 189, that it was settled that the act had any application whatever to civil officers. Indeed, prior to that case there does not seem to have been any application ever made by any civil officer of the United States under the act. Probably it was for this reason that Governor Meriwether failed to file any claim in that court within the six years allowed by law. But whatever may have been the reason for his failure to present a claim, it is abundantly clear now that he is entitled to be reimbursed upon this branch of the claim also.

The facts and the law require a report in favor of the claim. The entire claim in its three branches aggregates \$6,086.63.

Your committee, therefore, report back the bill H. R. 331, and recommend that the same do pass.

Findings of the Court of Claims.

DAVID MERIWETHER }
vs. } COURT OF CLAIMS, CONGRESSIONAL CASE, No. 148.
 THE UNITED STATES. }

FINDINGS OF FACT.

This case, referred by the Committee on Claims of the House of Representatives, under the provisions of the act of March 3, 1883, chap. 116 (22 Statutes at Large, page 485), having been heard by the court, the Attorney-General by his assistants appearing for the defense and protection of the interests of the United States, the court upon the evidence finds the facts to be as follows:

I.

The claimant, David Meriwether, was appointed governor of the Territory of New Mexico, May 6th, 1853, and held that office till October 30th, 1857. From July 1st, 1854, to June 30th, 1857, he was paid at the rate of \$3,000 a year and no more, being his salary as governor provided by the act of July 27th, 1854. (9 Stat. L., p. 311.) He claimed that he was entitled to \$1,000 a year additional for his services as superintendent of Indian affairs, under the act of September 9th, 1850. (9 Stat. L., p. 447.) The Secretary of the Treasury as well as the First Comptroller concurred in this view, as appears by the following letter:

TREASURY DEPARTMENT,
 February 14, 1856.

Hon. R. M. T. HUNTER,
 Chairman Committee on Finance, U. S. Senate:

SIR: The third section of the act of ninth September, 1850, Little and Brown, 9 p. 447, provides that the governor of New Mexico shall perform the duties and receive the emoluments of superintendent of Indian affairs, and the 12th section that he shall receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs.

By the act of the 27th July, 1854, volume 9, p. 311, to increase the salaries of executive and judiciary officers in Oregon, New Mexico, Washington, Utah, and Minnesota, it is provided "that the salary of the governor of New Mexico be, and the same is hereby, increased to the sum of three thousand dollars."

Upon application of the governor of New Mexico, the Comptroller of the Treasury examined the question of rate of compensation to which he was entitled, and reported to me his opinion, from which I am unable to dissent, that under the foregoing provisions he is entitled to \$3,000 as governor and \$1,000 as superintendent, making together four thousand, but no more than three thousand has been paid for want of sufficient appropriation.

If the committee take the same view of the subject an additional appropriation will be required, as follows:

Say from 27th July, 1854, to 30th June, 1855.....	\$929. 30
For the year to end 30th June, 1856.....	1, 000. 00
For the year to end 30th June, 1857.....	1, 000. 00
Making.....	2, 929. 30

I have the honor to be, very respectfully,

JAMES GUTHRIE,
 Secretary of the Treasury.

The amount recommended in the above letter has never been paid the claimant, nor any part thereof.

II.

While the claimant was governor the Secretary of the Treasury requested him to act as commissioner and disbursing agent for the work of building the public buildings, as appears by the following letters:

TREASURY DEPARTMENT, May 24, 1854.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th inst., asking that such steps be taken as may be deemed necessary for the selection of a suitable site for the penitentiary in New Mexico, and that measures be adopted for commencing the erection of the same.

The Hon. Secretary of War has transferred a site near Santa Fé, which, it is believed, possesses all the requisites for the purpose.

Should this site meet your views, after a careful examination on your return to New Mexico, you are authorized to make the location there.

To save the time which would necessarily be required to advertise for proposals if the work is executed by contract, the Department has decided to build it by hired labor. I have to request that you will act as commissioner and disbursing agent for the work. By appointing a competent superintendent to see that the work is faithfully executed and to procure suitable materials, it is hoped that the supervision in a general way and making the disbursements will not materially trespass upon your time, while such service will be of great importance in the economical and faithful execution of the work. Among the superintendent's duties will be those of a clerical nature, such as keeping the accounts and making out the reports and returns; and his certificate should form part of the vouchers taken by you for payments made.

You have already been furnished with the plan and specifications for the penitentiary of Utah, which have been approved by this Department, and, with the exception of the materials to be used, may be adopted for the one in question. It is understood that building stones of good quality abound in the immediate vicinity of the proposed site, which will be used instead of adobes. The first thing to be completed is the wall; after this, the cells and the rooms above. If there still remain funds enough to erect the keeper's house and the corral, they will be applied first in the completion of the former and what remains to the latter.

As there is now no secure place for confining prisoners in New Mexico, it is important that the wall and cells should be finished with as little delay as practicable, so that it may be used even before the whole is completed, and the services of the convicts applied usefully in finishing the rest of the establishment.

The deed of the site is in the possession of Capt. Langdon C. Easton, quartermaster at Albuquerque, N. M., who will be instructed to deliver it to you. After the title has been examined by the U. S. dist. att'y in New Mexico you will please forward it to this Department, with an abstract of title from that officer, to be submitted to the Attorney-General for final action; and as the Department by law can make no expenditure or advance until the title is approved by the Attorney-General, you will see the expediency of sending the deed and abstract as soon as may be after your return; you will, however, before sending them, have copies taken of the deed and abstract for reference in your office.

Funds to meet the disbursements will be placed to your credit, from time to time, as they may be required, and at any point that will best suit you. You will also be supplied with the "Regulations of the office of the construction of buildings under the Treas'y Dep't," and with blank forms for your accounts; these you will use, and you will please render your accounts quarterly, as therein directed.

You will receive herewith a copy of the letter of the Hon. Secretary of War of the 22d inst., stating that the site proposed would be transferred to this Department.

I have the honor to be, sir, very respectfully, your ob'd't serv't,

JAMES GUTHRIE,
Sec'y of the Treas'y.

His Exc'y D. MERIWETHER,
Gov'r of New Mexico.

TREASURY DEPARTMENT, June 30, 1854.

SIR: I have the honor to acknowledge the receipt of your letter of 29th ult., and in reply beg leave to state that your proceedings in removing the commissioners, superintendent, and clerk of the State-house being erected in New Mexico are approved. I do not consider the appointment of salaried commissioners as at all necessary, but shall be pleased if you will exercise a general supervision of the work during its progress. If this building and the penitentiary are not distant from each other, one superintendent and one clerk, it is believed, would be able to attend to both.

The Department does not consider that the salaries of the individuals removed can properly be paid out of the appropriation made on the 31st May past, or out of any hereafter made for the completion of the building.

The appropriation above referred to is fifty thousand dollars, and "to complete the public buildings in New Mexico."

If you will, as the Department wishes, assume the general superintendence of this work, funds to meet the disbursements will be placed to your credit, from time to time, as they may be required, and at any point that will best suit your convenience.

Very respectfully, your ob'd't serv't,

JAMES GUTHRIE,
Secretary of the Treasury.

His Exc'y D. MERIWETHER,
Gov'r of New Mexico, Santa Fé.

This work was no part of the claimant's duties as governor and was undertaken by him at the special request of the Secretary of the Treasury as above set forth. The claimant was required to give a bond, with approved sureties, in the sum of \$10,000, before disbursing any of this money. The work was done by hired labor and not by contract, and the workmen were paid weekly. The payments were therefore numerous and the responsibility great. The claimant settled his accounts to the complete satisfaction of the accounting officers of the Treasury and received their thanks for the interest he had taken in the matter. He disbursed in the matter of these buildings \$72,647.53. A reasonable commission for his services in so doing would be five per cent. of the amount, being \$3,632.38.

III.

The claimant having occasion to use a great amount of small coin in paying off the laborers employed on the public buildings, and having great difficulty in obtaining it in the Territory, procured from two banks in Louisville, Kentucky, the sum of \$525 in small gold and silver coins. This was done at the suggestion of the Assistant Secretary of the Treasury, and was obtained with the claimant's own private funds, but exclusively for the purpose of paying the Government laborers in the Territory. He left Louisville on his return to New Mexico in March, 1856, with this coin contained in two bags which he packed in his trunk in his state-room on the steam-boat on which he was going to St. Louis. He arrived at St. Louis in the morning and had his trunk removed to another steam-boat that was to start up the Missouri River the same evening, and his trunk was placed in his state-room on board that boat.

When dinner was announced he bolted from the inside the door of the state-room that led out on the guards, locked the door leading into the cabin, put the key into his pocket, and took his seat at the dining table immediately opposite the last-named door. Immediately after finishing his dinner he returned to the state-room, found that the door leading out on the guards had been broken open, his trunk broken open, and the money which he had obtained as aforesaid for Government purposes as well as his own money was gone. He immediately went to the office of the chief of police in St. Louis and offered him one-half the money if he could recover it. He suggested that claimant should remain in St. Louis that night and see what could be done. He did so, but finding that nothing had been accomplished by the next day, took the railroad to Jefferson City, where he overtook the steam-boat, boarded it, and went on to Independence, Missouri, where he had to borrow \$300 to enable himself and three mechanics, whom he was taking out to New Mexico to work on the public buildings, to get to Santa Fé. He never recovered any part of this money or received any credit for the same at the Treasury.

The loss was not caused by any fault or negligence on the part of the claimant, but was entirely accidental on his part, he having taken all due precautions against loss and after the loss used all diligence to recover the stolen money.

The clerk will transmit a certified copy of these findings to the honorable the Committee on Claims of the House of Representatives.

